

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GERICE SHADE

Plaintiff,

V.

CRACKER BARREL OLD COUNTRY
STORE, INC.,

Defendant.

Case No.: 4:21-cv-1049

**DEFENDANT'S NOTICE OF
REMOVAL TO FEDERAL COURT
UNDER 28 U.S.C. § 1441(b)**

NOTICE OF REMOVAL

TO: THE CLERK AND HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

PLEASE TAKE NOTICE that Defendant Cracker Barrel Old Country Store, Inc. (“Cracker Barrel”), by its undersigned counsel, without waiving the right to assert any defenses, files this Notice of Removal (“Notice”) of the state court action entitled *Gerice Shade v. Cracker Barrel Old Country Store, Inc.*, Case No. 2021 CV 00612, from the Mahoning County Court of Common Pleas, Youngstown, Ohio to the United States District Court for the Northern District of Ohio, Eastern Division, consistent with 28 U.S.C. §§ 1332, 1441, and 1446. In support of removal, Cracker Barrel respectfully states as follows:

1. On or about April 12, 2021, Plaintiff Gerice Shade (“Plaintiff”) filed a Complaint in the Mahoning County Common Pleas Court, Youngstown, Ohio (“State Court Action”). Therein, Plaintiff alleges violations of R.C. 4112.01, *et seq.* A true and correct copy of the Complaint in the State Court Action is attached to this Notice as **Exhibit A**.

2. As detailed herein, this Court has original subject matter jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and the action may be removed to this Court under 28

U.S.C. § 1441(b) because: (i) there is complete diversity of citizenship between Plaintiffs and Defendants, and (ii) the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

DIVERSITY OF CITIZENSHIP

3. Based on Plaintiff's Complaint, Cracker Barrel believes that Plaintiff is a citizen of the State of Ohio. (Complaint ¶ 1).

4. Under the Supreme Court's ruling in *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1185-86 (2010), a corporation is a citizen of both the state in which it is incorporated and the state in which it has its principal place of business, as determined by the "nerve center" test.

5. Cracker Barrel is a corporation, incorporated in the state of Tennessee with its principal place of business in Tennessee. Therefore, because Tennessee is both Cracker Barrel's state of incorporation and the location of its principal place of business, Cracker Barrel is solely a citizen of Tennessee.

6. Accordingly, there exists complete diversity among the parties because Plaintiff is a citizen of Ohio and Cracker Barrel is a citizen of Tennessee.

AMOUNT IN CONTROVERSY

7. The second element required for this Court's exercise of diversity jurisdiction in this case is that the amount in controversy must exceed \$75,000.00. 28 U.S.C. § 1332.

8. Plaintiff demands the court issue an "award against Defendant of compensatory and monetary damages to compensate [Plaintiff]... in an amount in excess of \$25,000 **per claim.**" (Complaint at Demand For Relief.) (Emphasis added.)

9. Plaintiff has alleged five separate violations of R.C. 4112.02 against Cracker Barrel. (*Id.* at ¶¶ 77-81.) As such, Plaintiff demands far in excess of \$75,000.00 in compensatory damages.

10. Plaintiff also demands an award of punitive damages in an amount in excess of \$25,000.00. (*Id.* at Demand for Relief.)

11. Cracker Barrel denies all of Plaintiff's allegations and disputes that Plaintiff is entitled to any relief. Without prejudice to its defenses in this action, however, Cracker Barrel stipulates that based on the face of the Complaint, the amount in controversy exceeds the \$75,000.00 threshold, exclusive of interest and costs, for removal under 28 U.S.C. § 1332(a).

12. Since there exists complete diversity among the parties, and the amount in controversy exceeds the threshold for purposes of diversity jurisdiction, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332.

OTHER PROVISIONS

13. Venue is proper in the United States District Court for the Northern District of Ohio, Eastern Division, because it is the federal district court for the district and division encompassing the Mahoning County Court of Common Pleas (where the State Court Action was filed), pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 115(a)(1).

14. Consistent with 28 U.S.C. § 1446(d), Cracker Barrel will promptly file a copy of this Notice of Removal with the Mahoning County Court of Common Pleas, and will serve a copy of same upon Plaintiff's counsel, Angela Rodriguez and Brian D. Spitz. A copy of the notice to the docket in the State Court Action is attached hereto as **Exhibit B**.

15. A Notice of Consent is not required because Cracker Barrel is the only named Defendant.

16. Cracker Barrel reserves the right to amend or supplement this Notice of Removal.

17. No previous application has been made for the relief requested in this Notice.

WHEREFORE, Cracker Barrel removes this action, now pending in the Mahoning County Court of Common Pleas, Youngstown, Ohio, to the United States District Court for the Northern District of Ohio, Eastern Division, consistent with 28 U.S.C. §§ 1332, 1441, and 1446, and respectfully requests that the Mahoning County Court of Common Pleas proceed no further with respect to this action. If any question arises as to the propriety of the removal of this action, Cracker Barrel respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

Dated: May 19, 2021

Respectfully submitted,

/s/ David Zulandt

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*Attorney for Defendant
Cracker Barrel Old Country Store, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served via electronic mail and/or regular U.S.

Mail, postage pre-paid on this 19th day of May, 2021:

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